Supreme Court No. 77615-6
COA No. 53027-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

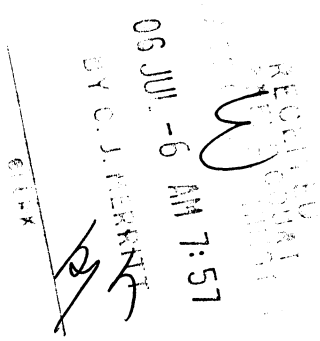
STATE OF WASHINGTON,

Respondent,

v.

RANDALL CHENOWETH,

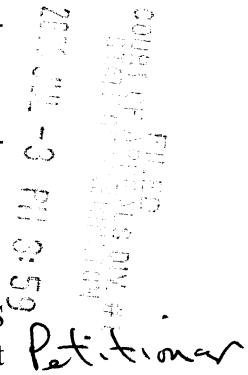
Petitioner..



ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Steven J. Mura

SUPPLEMENTAL BRIEF FOLLOWING ACCEPTANCE OF REVIEW



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Supreme Court no. 77615-6
COA No. 53027-5-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RANDALL CHENOWETH,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Steven J. Mura

SUPPLEMENTAL BRIEF FOLLOWING ACCEPTANCE OF REVIEW

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A. SUMMARY OF CASE ON REVIEW

This Court granted Mr. Chenoweth's petition for review of the Court of Appeals decision in No. 53027-5-I, which rejected his argument that the Whatcom County Superior Court erred in upholding an informant-based search warrant of his residence and his motor home, following several Franks[1] hearings brought under the Fourth Amendment.

In the first warrant application, prosecutor Kaholukula, who acted as an affiant, implied that the extent of the informant Parker's criminal history was one drug conviction. This implication was false, and omitted Parker's extensive history of crimes of dishonesty and his prior failed informant relationship with the police. At a minimum, this representation was reckless, given that Kaholukula was then in possession of awareness that she had previously prosecuted Parker, but had failed to review her own files on him, or to have checked his criminal history on multiple databases, all sources that would have revealed the extent of his history. In determining whether Kaholukula's omissions were reckless, this Court can take into account the extraordinarily material nature of the omissions. Finally, Mr. Chenoweth asks this Court to hold that, at a minimum, a prosecutor when acting as an affiant for a search warrant based on an

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[1] Franks v. Delaware, 438 U.S. 154, 155-56, 98 S.Ct. 2674, 57 L.Ed.2d 667 (1978).

informant's allegations, must be deemed to be then in possession of all of his or her previous knowledge of the informant's history, and cannot be heard to say he or she has "forgotten" information about the informant's history of the extent and significance that is present in this case.

Finally, in the second warrant application, affiant Kaholokula expressly stated to the issuing commissioner that she had "confirmed" Parker's history as one prior drug conviction. This statement was intentionally false, as Kaholukula manifestly had not done so, and represents a clear violation of Franks.

B. SUPPLEMENTAL ARGUMENT

KAHOLOKULA INTENTIONALLY OR RECKLESSLY MISSTATED, OR OMITTED INFORMATION FROM, THE WARRANT AFFIDAVITS BY TELLING THE ISSUING COMMISSIONER THAT THE INFORMANT'S HISTORY WAS ONE DRUG CONVICTION.

(1). In a series of rolling disclosures during the course of multiple *Franks* hearings, prosecutor Kaholukula admitted that at the time of her warrant application she was aware that she and her office had dealt with Parker in the past, and that those dealings had made her aware of Parker's prior crimes of dishonesty and his prior failed professional informant background. During the course of multiple Franks hearings, it became clear that Kaholukula knew, at the time of the

statements she made as affiant, that her office had extensive involvement with Parker in the past, including a case in which she had prosecuted Parker. In these hearings, Kaholukula made a series of rolling disclosures, admitting that she had possessed a remarkable depth and breadth of knowledge about Parker's extensive history, including Parker's prior crimes of dishonesty and prior failed professional informant background.

(i). April 2, 2003 Franks hearing. At the time of this hearing, the defense had filed a "Franks Motion" (Supp. CP ___, Sub # 14 in Wood file, 2/25/03), and argued that the warrant affiants omitted informant Parker's true criminal history, which included convictions for three controlled substance felonies, a first degree burglary, a theft in the first degree, and a theft in the third degree, which had not been revealed to the issuing Commissioner. 4/2/03 at 3-4. Prosecutor Kaholokula told the court in response that Mr Parker's criminal history included the drug conviction revealed to the Commissioner, but also included two theft convictions; however, she argued that none of this exempted Parker from being considered a citizen informant. 4/2/03 at 18-19. The trial court concluded that there were no material omissions in the warrant affidavit, but indicated its willingness to hear further testimony on the matter. 4/2/03 at 31-33.

(ii). May 12, 2003 Franks hearing. On May 12, 2003, the defense argued that prosecutor and search warrant affiant Kaholokula allowed the search warrant to be executed with knowledge that Parker was not a citizen informant entitled to a presumption of reliability but was in fact a habitual criminal who also had a previous informant relationship with the police as an informant. (Emphasis added.) Supp. CP ___, Sub # 57B in Wood file, at p. 2, 5/5/03. At the time of the May 12, 2003 hearing, prosecutor Kaholokula had filed the "Affidavit of Rosemary Kaholokula", in which Kaholokula now admitted that her prior prosecution file of Parker contained the information that Parker had been a paid police informant and had been terminated from that relationship. Supp. CP ___, Sub # 44 in Wood file, 5/9/03, pp. 1-2 (attached).

Critically, in this affidavit, Kaholokula admitted that when Sergeant King told her an informant named Nicholas Parker had offered him a tip about a methamphetamine laboratory, she recognized Parker's name as a person she had prosecuted for a VUCSA matter several years previously [in 1999/2000]. Supp. CP ___, Sub # 44 in Wood file, p. 1. Kaholokula also stated that at that time of the April 2, 2003 hearing, she had printed out criminal histories of Nicholas Parker that showed two prior drug convictions, a theft in the third degree charge, and driving charges. Supp. CP ___, Sub # 44 in Wood file, p. 3, para. 12, and attachment D.

Kaholokula, however, stated in her affidavit for the May 12 hearing that she did not have an "independent recollection" of Parker's history at the time of her application for the warrant and that she had not run Parker's criminal history at that time she applied for the warrant. Supp. CP ___, Sub # 44 in Wood file, 5/9/03, pp. 2, 3, paras. 3, 14.

Finally, also in her affidavit for the May 12 hearing, with regard to Parker's history as an informant, Kaholokula stated that she had recently again reviewed the file of her prior prosecution of Parker on drug charges, and she had learned Parker had worked as an official informant with the Bellingham Police Department and had been terminated from that relationship, and that she had previously filed charges against Parker for tampering with a witness. Kaholokula claimed, however, that at the time she applied for a warrant for Mr. Chenoweth's residence, she had forgotten all of the information about Parker's criminal history and this prior failed informant status. Supp. CP ___, Sub # 44 in Wood file, 5/9/03, p. 4-5.

At the May 12, 2003 hearing, on defense proffer, the trial court viewed a fax transmission sent to prosecutor Kaholokula from Parker's lawyer in a previous criminal case, one Tario, discussing Parker's prior status as a paid police informant and events leading to that case, prosecuted by Kaholokula, in which Parker was charged with crime or crimes arising out of his breach of informer agreements made with law

enforcement. 5/12/03 at 114-16. Prosecutor Kaholokula stipulated that she had received the fax in the course of the previous case she had prosecuted against the informant, but again asserted that she had forgotten about it at the time of applying for the warrant in the present case. 5/12/03 at 115-17.

Mr. Chenoweth's counsel argued to the trial court that the prosecutor's affidavit statements made while having failed to check on Parker's criminal background and history of involvement with the police, constituted a reckless omission of material facts, which eviscerated probable cause to search 12000 Aaron Drive. 5/13/03 at 168-69.

The trial court denied the defense motion to suppress the search warrant proceeds, stating that the defense had "found no case law authority that requires law enforcement to go out and to do a criminal records check on everybody who is a citizen informant." 5/13/03 at 169-79.

(iii). May 14, 2003 Franks hearing. On May 14, 2003, the defense proffered that one year prior to the search warrant in the present case, Nick Parker's former criminal defense attorney, Tario, participated in a meeting with prosecutor Kaholokula and Officer Stokes in which the negative credibility of Nick Parker was throughly discussed. 5/14/03 at 365-68. In this meeting, prosecutor Kaholokula allegedly stated that charges were being contemplated against Parker for suborning perjury.

5/14/03 at 368. The trial court responded to this proffer by stating that there was no authority requiring a warrant affiant to disclose to the magistrate the affiant's own subjective belief that the informant had committed a past crime of dishonesty or suborned perjury, 5/14/03 at 373-75, but ultimately allowed the testimony, first, of attorney Tario.

Tario testified that he represented Nick Parker in a prior case in which Kaholokula was the prosecutor. 5/14/03 at 389-90. At some point Tario met with Kaholokula, Detective Stokes, and attorney Bill Johnston to discuss a motion made by the defense requesting a copy of an informant contract between the police and Parker. 5/14/03 at 389-91. During these discussions with Kaholokula present, Detective Stokes stated that Parker's informant relationship with the police had been terminated because there were "significant problems with Nick Parker performing and really issues pertaining to his credibility." 5/14/03 at 392-93. Detective Stokes told Kaholokula that Parker "was giving him information that just wasn't true" and consequently the police "were just sick of him and terminated his contract." 5/14/03 at 393. In addition, Tario was told by prosecutor Kaholokula herself at the meeting that Parker was attempting to suborn the perjurious testimony of a co-defendant in the drug case. 5/14/03 at 394.

(iv) June 5, 2003 Franks hearing. On June 5, 2003, the defense made further argument in court on the motion to suppress. 6/5/03

at 3-49. Following argument, the trial court stated the prosecutor was under no duty to run "a records check and pass on all information about the informant which the prosecutor has in prior years" and that there was no "evidence that the prosecutor knowingly and intentionally failed to pass on any knowledge that she had had in the past." 6/5/03 at 50-52. Although the court stated that the omitted information was clearly fatal to probable cause, the court stated that because there was no recklessness, "a Franks hearing is not necessary in this case." 6/5/03 at 53 (the court noted that in effect a Franks hearing had been held by virtue of the taking of the testimony of the various witnesses).

(2) Intentional or reckless misstatements in, or omissions from, a warant affidavit, when material, will invalidate the warrant. In United States v. Leon, 468 U.S. 897, 82 L. Ed. 2d 677, 104 S. Ct. 3405 (1984), the United States Supreme Court held that in search warrant cases, the Fourth Amendment's exclusionary rule continues to apply where the "magistrate or judge in issuing the warrant was misled by information in an affidavit that the affiant knew was false or would have known was false except for his reckless disregard for the truth." United States v. Leon, 468 U.S. at 923 (citing Franks v. Delaware, 438 U.S. 154, 57 L. Ed. 2d 667, 98 S. Ct. 2674 (1978)); United States v. Kyllo, 37 F.3d 526, 528 (9th Cir. 1994); United States v. Davis, 714 F.2d 896, 899 n.5 (9th Cir. 1983); State

v. Cord, 103 Wn.2d 361, 366-67, 693 P.2d 81 (1985). In addition to misstatements, Franks also "protects against omissions that are designed to mislead, or that are made in reckless disregard of whether they would mislead, the magistrate." United States v. Colkley, 899 F.2d 297, 301 (4th Cir. 1990) (citing United States v. Reivich, 793 F.2d 957, 961 (8th Cir. 1986)).

(3). Kaholokula at least recklessly misled the issuing commissioner in the first warrant application by implying that Mr. Parker's relevant history was one drug conviction, and by omitting the rest of Parker's history. In the first telephone application, prosecutor Kaholokula addressed commissioner Mary Gross directly, and stated that, "as far as Mr. Parker's criminal history," she, Kaholokula, was the prosecutor in the prior drug case referred to by Officer King earlier in the oral warrant affidavit. Specifically, Kaholokula stated:

> Okay. Your Honor, the only thing I would add is that as far as Mr. Parker's criminal history, although Officer King hasn't verified what he said, I can tell the court that I was the prosecutor on that prior criminal case and so I know that to be accurate that he was convicted of a delivery of a drug.

Supp. CP ___, Sub # 44 (5/9/03, Exhibit A, p. 10.) (attached). The Commissioner asked her to swear this was true "to the best of your

knowledge," which Kaholokula did. Supp. CP ___, Sub # 44 (5/9/03, Exhibit A, p. 10.).

Kaholukula's implication that this was Mr. Parker's criminal history was false, and omitted Parker's extensive history of crimes of dishonesty and his prior failed informant relationship with the police.

At a minimum, this representation by Kaholukula was reckless, given that Kaholukula was then in possession of awareness that she had previously prosecuted Parker, but had failed to review her own files on him, or to have checked his criminal history on multiple databases, all sources that would have revealed the extent of his history.

It is important to note in this case that Kaholokula admitted at the second Franks hearing of May 12, 2003, that when Sergeant King told her an informant named Nicholas Parker had offered him a tip, she recognized Parker's name as a person she had prosecuted for a VUCSA matter several years previously [in 1999/2000]. Supp. CP ___, Sub # 44 in Wood file, p. 1. Kaholokula admitted that her files showed Parker had prior charges and convictions for offenses of dishonesty, including juvenile adjudications for theft in the first degree, theft in the second degree, and burglary in the second degree, and that he had a prior professional paid informant relationship with the Blaine police. She also admitted that she had now checked the criminal history of Nicholas Parker on two databases, that

showed he had two prior drug convictions, a theft in the third degree charge and a prior conviction for first degree theft. Supp. CP ___, Sub # 44 in Wood file, p. 1.

Given Kaholokula's recollection, at the time of the first warrant application, that she had previously prosecuted Parker, it was reckless for her to imply to the issuing commissioner that Parker's history was one drug conviction, without having checked her own files on Parker, that contained information about his extensive history. It was also reckless to have made this representation without checking the multiple criminal history databases she later admitted were readily available to her, and to therefore have omitted Parker's relevant history.

Kaholokula's implicit representation to the commissioner about Parker's history, and her omission of his relevant history, cannot reasonably be described as "negligence or innocent mistake." State v. Garrison, 118 Wn.2d 870, 872, 827 P.2d 1388 (1992) (citing Franks, 438 U.S. at 171). The difference between negligence on the one hand, and recklessness that occurred in this case is illustrated by United States v. Miller, 753 F.2d 1475 (9th Cir.1985), a case in which it was held that a failure to learn that the criminal background of an informant included a past conviction for perjury, did not constitute reckless disregard for the truth. The Ninth Circuit reasoned in Miller that where police officers

"made diligent efforts to find out about [the informant]'s background," their failure to uncover an additional perjury conviction could be considered no more than negligence. Miller, 753 F.2d at 1478. The warrant affiants were at most negligent in Miller: they employed a standard of care, making a good faith effort to discover information about the informant's background in preparing their warrant affidavits, but missed one prior matter. Here, Kaholokula was reckless.

The Court of Appeals noted in State v. O'Connor, 39 Wn. App. 113, 117-18, 692 P.2d 208 (1984), that Franks and the relevant Washington decisions do not precisely illuminate what constitutes "reckless" disregard for the truth. However, O'Connor applied the test of United States v. Davis, 617 F.2d 677, 694 (D.C.Cir.1979), where the court deemed recklessness was shown where the affiant in fact entertained serious doubts as to the truth of facts or statements in the affidavit. O'Connor, 39 Wn. App. at 117 (citing United States v. Davis, 617 F.2d at 694. Such "serious doubts" are shown by (1) actual deliberation on the part of the affiant, or (2) the existence of obvious reasons to doubt the veracity of the informant or the accuracy of his reports. O'Connor, 39 Wn. App. at 117 (citing Davis, 617 F.2d at 694).

Here, despite awareness that she had previously prosecuted Parker, and that she was in possession of files on Parker that logically would

contain information about his prior history, Kaholokula decided to not review these materials. In addition, Kaholokula admitted that there were at least two databases readily available to her that showed Parker's criminal history, yet she also decided not to review these databases, and instead misled the issuing commissioner by implying that Parker's history was one drug conviction. Her deliberate choice, and decision, to not review these sources available to her, must be considered reckless.

The question of recklessness must be viewed with the understanding that a prosecutor has a duty to be frank with the commissioner issuing a warrant. One of the primary values of the warrant process is that it permits "informed and deliberate determinations" of probable cause to be made by a neutral and detached magistrate. Aguilar v. Texas, 378 U.S. 108, 12 L. Ed. 2d 723, 84 S. Ct. 1509 (1964). Franks emphasizes the importance of truthful information to the magistrate who must determine whether there is probable cause. Franks, 438 U.S. at 165.

> The Supreme Court in Franks noted that the Warrant Clause of the Fourth Amendment takes the affiant's good faith as its premise. 438 U.S. at 164. Moreover, "because it is the magistrate who must determine independently whether there is probable cause, . . . it would be an unthinkable imposition upon his authority if a warrant affidavit, revealed after the fact to contain a deliberately or recklessly false statement, were to stand beyond impeachment." Id. at 165. The use of deliberately falsified information is not the only way by which police officers can mislead a magistrate when making a probable cause

> determination. By reporting less than the total story, an affiant can manipulate the inferences a magistrate will draw. To allow a magistrate to be misled in such a manner could denude the probable cause requirement of all real meaning. See id. at 168.

United States v. Stanert, 762 F.2d 775, 781(1985). Prosecutor Kaholukula delivered an impression of the informant in this case to the issuing commissioner, while deliberately deciding not to check the sources readily available to her that would reveal the true extent of his criminal history. Importantly, by deciding not to review her available materials on Parker, Kaholokula successfully portrayed Parker to the commissioner as a "citizen informant." 6/5/03 at 50-52. Surely this prosecutor was aware of the significance of that distinction for the purposes of determining probable cause. Appellant's Opening Brief, at pp. 38-44; State v. Conner, 58 Wn. App. 90, 98-99, 791 P.2d 261 (1990); United States v. Burke, 517 F.2d 377, 380 (2d Cir. 1975); 2 LaFave, Search and Seizure, § 3.4(a), at 220-21 (3rd ed. 1996).

The concept of "recklessness" applies with force in this case. This prosecutor had a long and convoluted history with the informant, charging and convicting him with drug crimes in the past, and knowing in the past that he had been convicted of multiple drug crimes and also crimes of general dishonesty. Unlike the investigators in Miller, who failed to uncover one prior matter about that informant of which they had never had

any knowledge in the first place, Kaholokula in this case had intimate prior involvement with Parker's multiple past crimes of dishonesty, having once discussed the bringing of charges against him herself, for actual subornation of perjury -- soliciting a person to lie under oath. And of course, her own file showed Parker to be a prior terminated professional informant. All of these things placed Parker in an informant class diametrically opposite to that of "citizen" informant. To offer Parker up to the Commissioner as a concerned citizen coming forward, while ignoring all her known records that she had on Parker and not making any effort to review them or readily available databases, is the personification of recklessness. A warrant affiant "may not . . . recklessly prepare the search warrant affidavit to create a materially false impression of enhanced reliability." United States v. Rule, 594 F. Supp. 1223, 1240-41 (D. Me. 1984), order vacated on other grounds sub. nom United States v. Streifel, 781 F.2d 953 (1st Cir. 1986). The multiple material omissions about Parker's informant and criminal background were a result of Kaholokula's reckless preparation of her warrant affidavit to the commissioner.

This Court can also consider the extraordinarily material nature of the facts omitted from the warrant affidavit, in determining whether Kaholokula was reckless. The failure to include information and a reckless disregard for its consequences may be inferred from the fact that

the information was omitted, if the defendant can "show that the omitted material would be 'clearly critical' to the finding of possible cause." United States v. Jacobs, 986 F.2d 1231, 1235 (8th Cir. 1993) (quoting United States v. Reivich, 793 F.2d 957, 961 (8th Cir. 1986); United States v. Martin, 615 F.2d 318, 328 (5th Cir. 1980). Here, of course, the trial court, despite rejecting Mr. Chenoweth's arguments of recklessness, emphatically concluded that the information omitted from the warrant application about the informant would have been fatal to his credibility and thus fatal to probable cause for the search warrant. 6/5/03 at 53-56.

(4). The prosecutor must be deemed to be in possession of her prior knowledge of the informant's history, and cannot be heard to say that he or she "forgot" that information. Finally, Mr. Chenoweth asks this court to hold that, at a minimum, a prosecutor when acting as an affiant for a search warrant based on an informant's allegations must be deemed to be then in possession of all his or her previous knowledge of the informant's relevant history, and cannot be heard to assert that he or she has "forgotten" information about his history of the extent and significance that is present in this case. A rule, that prosecutors are deemed to know all information about an informant in their possession and control, would represent an adoption of the most minimum of the due process protections that are afforded to a criminal defendants in the similar

context of the prosecution's duty to reveal exculpatory information in the context of trial. Relevant Washington and federal case law under Brady v. Maryland, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), includes the doctrine that a prosecutor must reveal all exculpatory information that is both personally known to the prosecutor, and is within the possession or control of the prosecutor's office and others acting on behalf of the government in a particular case, including the police. Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995). Thus prosecutor Kaholokula's claimed lack of actual personal knowledge of Parker's relevant history at the time of the warrant affidavit should not render her past information unknown, for Brady purposes, or Franks. See United States v. Auten, 632 F.2d 478, 481 (5th Cir. 1980) (Brady context) (in the interests of inherent fairness the prosecution is obligated to produce certain evidence actually or constructively in its possession or accessible to it) (citing Calley v. Callaway, 519 F.2d 184, 223 (5th Cir. 1975)). For purposes of the Brady rule, the prosecutor's office and investigators in a case are treated as a "prosecution team". See United States v. Antone, 603 F.2d 566, 569 (5th Cir. 1979). Knowledge by any member of that team is imputed to the prosecutor. See, e.g., United States ex rel. Smith v. Fairman, 769 F.2d 386, 391-92 (7th Cir. 1985) (finding that the prosecutor's ignorance of a police worksheet did not justify the State's

failure to provide information); State v. Copeland, 89 Wn. App. 492, 497, 949 P.2d 458 (1998) (a prosecutor must disclose any information within the knowledge, control, or possession of the deputy prosecutor or the deputy prosecutor's staff, "regardless of whether the deputy prosecutor has actual knowledge of the information").

At a minimum, these principles should apply to motions under Franks v. Delaware. at least to the extent of the affiant's own personal possession and control of information. Just as Brady obligations protect the due process rights of criminal defendants, the question of the prosecutor's duty under Franks in this case, as a warrant affiant, to reveal the relevant history of an informant whose statements are offered in support of probable cause to issue a search warrant, is a question that concerns due process - in particular, the Fourth Amendment right to be free from illegal searches. Franks v. Delaware, 438 U.S. at 159 n. 4. For purposes of intentional or reckless false statement or omission, Kaholokula's knowledge of Parker's history at the time of the warrant application must be deemed to include, at a minimum, all the knowledge within her possession and control, therefore including all the information she possessed in her own files about Parker. In this case, commissioner Mary Gross was not provided with a fair opportunity to review the question of the informant's true credibility in making the probable cause

determination, and ended up performing her critical role at the caprice of the prosecutor affiant involved in the case. But this Court should hold that prosecutors cannot be allowed to prepare affidavits for informant-based warrants based on the allegations of dishonest informants, and then later be heard to state that they forgot the extensive history of the informant for crimes of dishonesty and failed informant work, where that information was in their possession and control.

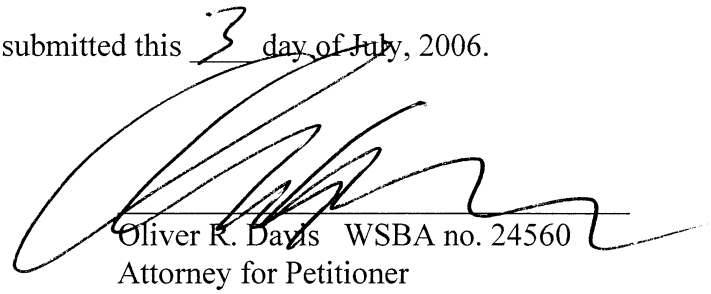
(5). Kaholokula falsely stated to the issuing commissioner in the second warrant application that she had "confirmed the informant's history as one prior drug conviction." Finally, in the second telephonic application, for a warrant covering the motorhome outside the residence, affiant Kaholokula told the issuing commissioner that she wanted to put on the record that after the previous day's warrant application she had "confirmed Nicholas Parker's criminal history from what I recalled yesterday." (Emphasis added.) Supp. CP ___, Sub # 44 (5/9/03, Exhibit C, at p. 1.) (attached). In this second warrant application, Kaholokula's affirmative representation to the commissioner that she had confirmed Parker's history was an intentional falsehood because Kaholokula failed to have actually reviewed her own files showing Parker's extensive criminal history, which included not just additional drug offenses but also multiple crimes of general dishonesty such as theft,

and an investigation or charging of the crime of suborning false testimony in court. She had also failed to review two criminal databases readily available to her. Her direct statement that she had confirmed Parker's history as one drug conviction was an intentional falsehood that should invalidate the warrant under even the strictest application of Franks.

C. CONCLUSION

Based on the foregoing, Mr. Chenoweth asks this Court to reverse the order denying the defense motion to suppress the evidence seized as a result of the search warrant, reverse his convictions for prosecutorial misconduct, and strike one count of possession of a controlled substance.

Respectfully submitted this 3 day of July, 2006.



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

THE STATE OF WASHINGTON,	)	
	)	
Plaintiff.	)	**No.: 03-1-00211-1; 03-1-00212-0**
vs.	)	
	)	**AFFIDAVIT OF ROSEMARY H.**
RANDAL LEE CHENOWETH,	)	**KAHOLOKULA**
BARBARA JOYCE WOOD,	)	
	)	
Defendant.	)	

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

Rosemary H. Kaholokula, being first duly sworn on oath, deposes and says: That she is a duly appointed and acting Deputy Prosecuting Attorney in and for Whatcom County, State of Washington.

1. On February 5, 2003, I received a telephone call from Sergeant Ryan King of the Blaine Police Department. He was requesting a telephonic search warrant. He apprised me of the facts as they are in the transcribed in the first telephonic application for search warrant. This transcript is attached hereto as Exhibit A.

2. Sergeant King told me that the informant was Nick Parker. I was familiar with the name and recognized Parker as an individual I had prosecuted on various VUCSA violations several years ago. I recalled that Parker had a number of pending charges and my memory was that some had been dismissed in exchange for a plea. I did not remember what all exactly Parker pled to but I did recall that there was at least a plea to a delivery of cocaine. I recalled that Parker was sent to prison for a period of time. I also recalled from that case something about allegations on Parker's part that he was giving drugs to his attorney. I also recalled that his attorney disputed the allegation.

UU

This was the extent of my personal recollection as to Parker's criminal history.

3. I did not independently run a criminal history on Parker prior to calling Commissioner Gross to seek a search warrant.

4. I do not recall if I asked Sergeant King about Parker's history prior to the request to the commissioner for a search warrant. I probably did not but only first proposed the question in the midst of the search warrant request.

5. When Sergeant King said that Parker had told him that he had served approximately a year and a day in the state penitentiary for delivery of a controlled substance and possession of cocaine, this comported with my personal recollection of that case. The year and a day seemed a little short considering the standard range for a delivery charge, but I did not know how much good time or work release he would have received.

6. Yesterday I examined the files in my office with respect to Parker's charges that were prosecuted in 1999/ 2000. I found that Parker, in fact, was convicted of one delivery of cocaine charge and one possession charge. I also learned that Parker, in fact, spent slightly over a year in prison (10/3/2000 to 10/23/2001). See Exhibit B.

7. On February 6, 2003, Detective Lee Beld called me requesting an addendum to the original search warrant to search a motor home on the property. Beld told me that the search warrant granted the previous day was in the process of being executed. He wanted to search the mobile home based on additional information received from Parker. The addendum was granted. The application for the addendum is attached hereto as Exhibit C.

8. At the State's request, on either the 6th or 7th of February, the court sealed the applications for the above search warrant and addendum. The sealing was for purposes of protecting the informant's identification. After the execution of the search warrants, I was informed by law enforcement that they wanted to explore the possibility of using Parker as an informant for future cases. I was told he was not then an informant. I have since learned that law enforcement is not interested in using Parker as an informant.

9. On February 7, 2003, I filed charges on Randal Chenoweth and Barbara Wood for a variety of offenses related to the manufacture of methamphetamine.

10. On March 13, 2003, I filed the State's first Witness List. Parker is listed as "confidential informant" therein. I was unsure whether I would actually use him as a witness in the case yet.

11. An amended witness list was filed on March 31, 2003. At this point, the case had been largely transferred to a different prosecutor and we decided that we would probably call Parker as a witness. Therefore, we listed his name on this witness list.

12. On April 2, 2003, a hearing was held on defendant's first Franks motion. At that hearing, I had in my possession a print-out of Nicholas Parker's criminal history. It is a state-wide print-out that I can access in my office and rely on in determining criminal history. A copy of it is attached hereto as Exhibit D. It indicates only the two felony drug convictions from 2000. It does not indicate any other felony criminal history (which term I use to mean "convictions"). It only indicates a pri[redacted]d a couple of driving charges.

13. At some point I accessed another criminal history system (nation wide system) known as "NCIC." This system reflects only three felony convictions: Theft in the First Degree, Delivery of a Controlled Substance, and Possession of a Controlled Substance. I don't remember if I had this print-out at the time of the April 2 hearing. If I did, I would have told the court about this criminal history. See Exhibit E.

14. Defense counsel alleges that because I prosecuted Parker in 1999/2000, I knew his arrest and conviction history. I prosecute more than 200 cause numbers a year. I did not have an independent recollection of Parker's history. I have since reviewed Parker's Judgment and Sentence filed in Cause # 00-1-00069-6 and see that the criminal history reflected therein was for three juvenile adjudications: Theft in the Second Degree, Theft in the First Degree, and Burglary in the Second Degree. See Exhibit F.

15. After the April 2, 2003, hearing in which defense counsel kept insisting that Parker had many other felony criminal convictions, I checked our computer in my office that logs all cases received and prosecuted by this office. According to our computer, Parker was adjudicated as a juvenile of Burglary II and Theft II under Cause # 92-8-00782-5. See Exhibit G. These adjudications do not appear on the history that I relied on in the April 2 hearing. This system also shows a juvenile adjudication for Theft in the First Degree under Cause #95-8-00634-3. See Exhibit H. This adjudication does not appear as a conviction on the history that I relied on in the April 2 hearing. Our system also reflects the drug convictions that I prosecuted in 1999/2000. Our computer reflects the Incest charge that defense counsel has asserted to be a conviction, however, our computer shows that that charge was dismissed. See Exhibit I. I have not checked the court files with respect to any of these charges.

16. Defense counsel alleges that because I prosecuted Parker in 1999/2000, I had personal knowledge that Parker had been described as a person who fabricates

things. As previously indicated, the extent of my recollection with respect to this issue, at the time I sought a search warrant, was that I had information that Parker had alleged that he had provided drugs to his defense attorney. I knew the allegation was disputed. I have since reviewed my files and it appears that the reason that I brought this issue to the court's attention was because of a concern that, with his client supposedly making these allegations, the defense attorney may have a conflict of interest. In reviewing my file it appears that the veracity of Parker was not relevant to this issue – the issue was whether the attorney would have a conflict when his client was saying these things.

17. On April 2, 2003, I provided defense counsel with criminal conviction history and any plea bargains with witnesses. See Exhibit J.

18. On April 7, 2003, I provided further information to defense counsel about Parker. See Exhibit K.

19. I was unaware of any civil suit with the Blaine Police Department at the time of the application for the search warrant.

20. Defense counsel alleges, "Rosemary Kaholokula at first denied the facts, and after being confronted with the issue of the vehicle as a motive to lie, still claimed that the vehicle being returned was not discussed until after the revelation of the incriminating information against the Defendants by the informant. That was a lie. Officer Boyd of Lynden, clearly stated that Parker's first calls were solely about his desire to get his vehicle and his insistence that the police help him do so." See p. 20. I don't know what defense counsel is talking about here. There was an evidentiary hearing on April 2, 2003, where Officer King testified about when the meth lab information was revealed as compared to when the retrieval of Parker's vehicle was discussed. I do not believe that I testified to anything. Furthermore, I have never spoken with Officer Boyd. After the April 2, 2003, the case was essentially taken over by another prosecutor. I have no personal knowledge as to what Officer Boyd has said with respect to this issue.

21. Yesterday, I reviewed Parker's criminal files in our office from the 1999/ 2000 drug charges. I learned the following:

a. There were three cause numbers. The first cause number, 99-1-00349-0, alleged two deliveries of cocaine. The Information was filed on April 1, 1999. I was not the prosecution who charged this case. According to our computer system and file, I took over the prosecution of the case sometime in July of 1999. [redacted] a confidential informant agreement between Nicholas Parker and the Bellingham Police Department. It was signed in February, 1999.

b. The second cause number, also from 1999, was charged by me on October 13, 1999, based on an event occurring in July of 1998. It charged one count of delivery.

c. The third cause number was charged by me on January 20, 2000, for events occurring on December 4, 1999, and December 15, 1999. The charges were two deliveries. I filed an amended information on February 10, 2000, alleging another delivery occurring on 11/17/99. On February 11, 2000, I filed another information incorporating the two deliveries from the first 1999 cause number, and adding a tampering with a witness charge.

d. In June of 2000, I became concerned about possible issues arising on appeal with respect to a potential/actual conflict of interest with Parker's attorney. This was in light of information provided to me by several people including Parker's attorney, and in light of the line of questioning that Parker's attorney was pursuing in witness interviews. Some of those same people indicated that they thought Parker was untruthful. Parker himself later denied having made any of those allegations about his attorney. A hearing was held, Parker waived any conflict, and the case proceeded.

e. These pending matters were finally resolved on September 27, 2000, when the second 99 cause number was dismissed and Parker pled to one count of delivery and one count of possession in the 2000 cause number. (The first 99 cause number was dismissed in February, 2000, when those charges were incorporated into the 2000 cause number.

f. At the time of the application for the search warrant, and up until I reviewed the defendant's pending motion, I had no independent recollection that Parker had [redacted] After reviewing the [redacted] it seems clear now that he did, but I believe that that was finished by the time I took over the prosecution of his cases. It is clear from the files that I took over the Parker matters in July, 1999. I do not believe he was working as an informant at that time. I'm sure I knew when I was prosecuting Parker in 2000 that he was an informant previous to the prosecution, but it was not a factor pertinent to my prosecution which probably explains why I have no independent recollection of it. I do not know why Parker's informant relationship as an informant with the Bellingham Police Department ended badly. I may have known in 1999 or 2000, but I have no recollection at this point as to having information explaining why the relationship ended.

22. On May 8, 2003, at 12:15 p.m., I was informed by Deputy Prosecuting Attorney James Hulbert, who has been handling this case since April 2, 2003, that according to Detective Lee Beld, Nicholas Parker was paid several hundred dollars some time after providing the information that led to the search warrant and after the execution of the search warrant. I was informed that after the search warrant was obtained, but before its execution, Parker had asked if he could get some money out of this. I was informed that Parker was

informed that if the search warrant "panned out", then he might get some money. I was informed that the issue of money did not arise until after the information that led to the first search warrant was given. This was the first I had heard of this. I was not informed by Detective Beld or anybody else that Parker was subsequently paid for the information.

23. On May 9, 2003, in the morning, I listened to a voice mail left by Detective Beld for Jim Hulbert. It related to payment to Nicholas Parker and Parker's willingness and motivation to testify at the trial. The first part of the voice mail I relate verbatim as follows:

> Yeah, Lee Beld. I just talked to Nick Parker and he was going to give you a call but he says, I will give you 100% truthful testimony, I saw lots of shit in that house, I saw lots of people doing lots of things, I didn't discuss it with him any further than that. I did ask him a little bit about this when did the whole money thing come up and he says well I told you right . . . I told somebody right from the beginning that I wanted uh I'd like some money out of this I definitely wanted my car back and and uh he says I'm not sure that somebody actually promised me the money just said that you know we'll see how it all turns out and make sure everything is where I said it was going to be and he says I don't know if that was you or Ryan or whoever he says it might even have been later but at some point in time the money came up and he thought it was pretty early on.

The remainder of the voice mail is summarized as follows:

> Parker affirmed that he would testify. Beld told him to testify truthfully. Beld talked about whether Parker would present as a good witness. Parker told Beld he was hoping for consideration on the case he's currently got pending.

24. This morning I called Sergeant Ryan King. He told me that no conversation about money occurred in his presence prior to the issuance of the search warrant. He said that the sequence of events was as follows: King responded to meet with Parker. King knew nothing about any desire for money on the part of Parker. King met with Parker. Parker didn't say anything about wanting any money. They talked for about 10 – 15 minutes prior to Detective Beld's arrival. About half the information was out before Beld arrived. After Beld's arrival there was no discussion about any payment to Parker or about Parker's desire for money. The search warrant was applied for and issued. Some time after the issuance of the search warrant but before it's execution, Parker approached Beld and asked for some money to repair his car. Beld approached King and asked if money could be provided to Parker. Sergeant King also said that his knowledge of Parker before this day was limited to having heard Parker's name several years ago in context of his (King's) job.

Rosemary H. Kaholokula, #25026
Deputy Prosecuting Attorney

SUBSCRIBED AND SWORN to before me this 9 day of May, 2003.

NOTARY PUBLIC in and for the
State of Washington. My
commission expires:
July 15, 2005

SEARCH WARRANT
2003M00333
State v. Randal Chenoweth 03-1-00211-1
State v. Barbara Wood 03-1-00212-0

Rosemary Kaholokula: RHK
Commissioner Martha Gross: CMG:
Officer Ryan King: ORK

RHK: This is a telephonic application for a search warrant. Rosemary Kaholokula is representing the State, Commissioner Gross is the magistrate and Officer Ryan King of the Blaine Police Department is the affiant and if you would please raise your right hand, Officer King, the Commissioner can swear you in.

ORK: My right hand is raised.

CMG: Okay, do you swear to tell the truth, the whole truth and nothing but the truth in all matters before the Court?

ORK: I do, your Honor.

CMG: Okay. Go ahead.

RHK: Why don't you first go ahead the state your occupation and where you work.

ORK: I am currently a police officer with the City of Blaine Police Department.

RHK: And how long have you been with the Blaine Police Department?

ORK: Approximately 12 years.

RHK: And, during that tenure there, did you spend some time as the drug detective over there?

ORK: Yes, I did, I spent approximately 4 ½ years as a drug investigator assigned to DEA and U.S. Customs Service in Blaine, Washington.

RHK: And, as an officer and also with the WIN team or as the drug investigator, did you receive specific training in how meth labs are operated and how methamphetamine is manufactured?

ORK: Yes, I have.

RHK: What is that training that you received?

Exhibit A

ORK: Uh, approximately 3 years as a Certified Crime Lab Enforcement Officer, certified by the Drug Enforcement Administration in Quantico, Virginia. Also, approximately 120 hours in Site Safety School certified by DEA in Quantico and the Clandestine Laboratory Technical Entry Officer also certified by DEA in Quantico, Virginia.

RHK: And, so what sort of things are you trained in when you receive these certifications?

ORK: I am trained in the recognition of (unintelligible) chemicals, the manufacturing process of illicit drugs.

RHK: Including methamphetamine?

ORK: Methamphetamine? Um, also instructed on how to dismantle such laboratories and investigation of further suspects on that concerning the methamphetamine manufacturing.

RHK: How long ago did you have this training?

ORK: Training occurred approximately 3 years ago.

RHK: And when did you stop being the drug investigator?

ORK: Could have been January 1st of 2003.

RHK: Have you, um, actually investigated and seen methamphetamine labs as an officer and as the drug investigator?

ORK: Yes, I have. I have actually assisted in the clean up and removal of at least four methamphetamine labs within Whatcom County, Washington.

RHK: And, was that within the last 3-6 years?

ORK: Yeah, that was within the last 3 years.

RHK: Okay. Why don't you go ahead and state, well, why don't you first state what it is you want to search and what you want to search for.

ORK: Okay. The place, your Honor, the place that I would like to search is a white single story wood framed single family dwelling with composite roof located at 1200 Aaron Drive, Lynden, Washington.

CMG: Can you repeat that again?

ORK: The....

CMG: Just the address.

ORK: 1200 Aaron Drive.

CMG: How do you spell Aaron?

ORK: A-A-R-O-N

CMG: Okay, and that was in which community? Blaine?

ORK: In Lynden, Washington.

CMG: Thank you.

ORK: You're welcome. The residence is further located on the southwest corner of Aaron Drive and Binup Road. Binup is B-I-N-U-P in Lynden, Washington.

CMG: Okay.

ORK: (unintelligible) has the numbers 1200 attached to the front, as well as blue lettering painted on the street curb with the numbers 1200. Also included in that scripture is a C attached to the garage.

RHK: How is it attached?

ORK: I'm sorry?

RHK: How is it attached?

ORK: It is attached by a, uh, kind of walkway directly off of the laundry room area or utility room as soon as you exit out to that floor, you walk up to the garage door.

CMG: So it's a detached garage, but it's associated with the house?

ORK: Correct.

CMG: Okay.

RHK: Why don't you go ahead and write that on the search warrant that it would be a detached garage associated with the house by a walkway that leads to it from the house?

ORK: Okay.

RHK: And while you've got that, go ahead and tell us what you want to search for.

ORK: Okay. It's been noted on the warrant. The other search for, your Honor, would be flasks, ephedrine, red phosphorous, tincture of iodine, acetone, kerosene, draino, red devil lye, scales, chemical bi-products, hoses, occufilters with bi-product, hydrogen gas generators, jars, beakers or chemicals used in methamphetamine manufacturing, methamphetamine, packaging materials, crib notes, records showing dominion of occupancy, currency associated with the sale of controlled substances.

RHK: And these items that you mention specifically, the chemicals and the flasks, are those all items associated with the manufacturer of methamphetamine?

ORK: Yes they are.

RHK: And the chemicals, would they all be used actually in the to make the methamphetamine in the manufacturing process?

ORK: Yes they are.

RHK: And the flasks and scales, they would be used also to, um, um, I guess mix up those chemicals?

ORK: That's correct.

RHK: Then to weigh the finished product?

ORK: Correct.

RHK: And the ephedrine, is that the common precursor drug used to manufacture methamphetamine?

ORK: Yes it is.

RHK: Okay, why don't you go ahead and state the probable cause if you have it?

ORK: Okay, your Honor, on today the February 5th 2003 at approximately 7:00 a.m., I received a telephone call from Lynden Police Department, who put me in contact with a Ferndale resident by cellular telephone. I contacted that person and he was identified as John Nicholas Parker of Robin Drive in Ferndale, Washington. Mr. Parker agreed to meet with me to provide information about a methamphetamine lab that was actually in progress at the 1200 Aaron Drive address.

RHK: Let's talk about, um, Nicholas Parker for just a minute. Are you aware of his criminal history?

ORK: Yes I am.

RHK: And, what is his criminal history as far as you know?

ORK: He's indicated that he served approximately a year and a day in the state penitentiary for delivery of a controlled substance and possession of cocaine.

RHK: And this is what he told you?

ORK: That's correct.

RHK: Could he have verified through a record's check?

ORK: I have not.

RHK: Okay. Um, okay go ahead.

ORK: I met with Mr. Parker at the police department and he indicated to me that at around 3:30 to 3:45 this morning, um, on the 5th of February, he had a conversation with an acquaintance of his by the name of Kelby Hines H-I-N-E-S, I believe. Um, that discussion was regarding a vehicle in which Mr. Parker had taken to one of the suspects of this residence, a Randy Chenoweth. Um, apparently Mr. Parker had been trying to get his vehicle back and during this conversation, a three-way call had been placed to Randy Chenoweth at his residence by Kelby Hines. It was Kelby Hines and Randy Chenoweth that had the conversation about the release of Mr. Parker's vehicle over Mr. Chenoweth was unaware that Mr. Parker was on that three-way call. The conversation....

CMG: Mr. Parker, Mr. Chenoweth was unaware that Mr. Parker was on the call?

ORK: Correct.

CMG: Okay.

ORK: The conversation over the vehicle took place over a period of just a few minutes. The telephone call ended.

RHK: And this was about 3:30 or 3:45 this morning?

ORK: Correct.

RHK: Okay.

ORK: Um, Mr. Parker then went to the Chenoweth residence at 1200 Aaron Drive and his girlfriend is Barbara Wood.

RHK: Randy's girlfriend?

ORK: Right.

RHK: Okay.

CMG: Okay, back up again, I missed, how could a phone call (unintelligible) I missed a little piece before they talked to the girlfriend, what did you say before that?

ORK: Mr. Parker had gone to the 1200 Aaron Drive address.

CMG: Okay.

ORK: To meet with Randy Chenoweth regarding the retrieval of his vehicle.

CMG: Okay.

ORK: This occurred about well, 4:10 this morning after the phone call.

RHK: Okay, and then they got there and then Parker got to Randy's residence. What happened then?

ORK: Um, Mr. Parker indicated he was in the garage and observed flasks believed to be glass filled with liquid and other products. It appeared to him that it was in a separation process and that it appeared that illegal drugs were being manufactured there. He had also seen several chemicals, those chemicals, bear with me a moment, I'll get my list. Uh, he had seen ephedrine, uh, canning jars, red phosphorous, tincture of iodine, acetone coffee filters, red devil lye, draino, what he described as a gas generator, (unintelligible) a bottle with a hose coming onto the top of it they use in part of the process of manufacturing methamphetamine. Um, he also had seen coffee filters and kerosene inside of the garage.

RHK: This is all at 4:00 this morning?

ORK: Yes.

RHK: Okay.

ORK: Um, he had inquired about, Mr. Parker inquired about the danger of bringing the vehicle back to Mr. Chenoweth and apparently Mr. Chenoweth basically told him to leave, that he wasn't getting his vehicle back and a short time later, Mr. Parker did leave the residence.

RHK: Okay, will you back up a little bit, was, um, you had mentioned Randy's girlfriend, Barbara Wood, previously, was she in the area as well?

ORK: She was not immediately in the garage at the time of this contact at 4:00 this morning.

RHK: Okay, is she associated with the house somehow?

ORK: Yes she is. She also lives at 1200 Aaron Drive.

RHK: How do you know?

ORK: Um, Ms. Wood was a previous employee with the City of Blaine and I am personally familiar as that being her address as it was indicated in police records here.

RHK: And did Mr. Parker also say that he knew that Barbara lived there?

ORK: Yes he did.

RHK: Okay, now you indicated that Mr. Parker, in the garage, saw, um, flasks with liquid and other products that appeared to be in a separation process and that illegal drugs appeared to being manufactured at that location on, did he say illegal drugs or did he specify methamphetamine?

ORK: He specified methamphetamine.

RHK: And, do you know the basis of his knowledge as to why he thinks it was methamphetamine being manufactured?

ORK: He told me that he had been told directly by Randy Chenoweth that he makes methamphetamine at that location and residence. Um, he has also had Mr. Parker during, visits by Parker to the residence obtain flasks and other precursor chemicals directly from Ms. Wood and hand them to Mr. Chenoweth during the manufacturing process.

RHK: So basically, he indicated to you that he had been there when they were manufacturing meth before and they had admitted to him that they were in fact manufacturing methamphetamine at the time?

ORK: Correct.

RHK: And on those occasions, did the set up when they said they were manufacturing methamphetamine, was the set up the same as what he saw this morning at about 4:00?

ORK: Yes.

RHK: And what he described to you about, um, the flasks with products in a separation phase, what does that indicate to you in your knowledge of manufacturing methamphetamine?

ORK: To me, the separation phase could either be at the beginning or toward the end of the manufacturing process. Normally, ephedrine and other chemicals such as kerosene, uh, alcohol or water are combined in a flask or large container and allowed to sit for some time where the ephedrine is actually extracted from the binder and the binder basically

floats to the top, the ephedrine is, or, excuse me, the ephedrine remains at the bottom, that liquid containing the ephedrine is then strained off into, uh, another container to continue with the manufacturing process.

RHK: And what Parker describes to you about these liquids, does that comport with your understanding about the separation phase and the extracting the ephedrine?

ORK: Yes it does.

RHK: And he specifically told you that he saw ephedrine, how does he know that it was ephedrine?

ORK: He was told directly by, um, Mr. Chenoweth that it was ephedrine and he has also obtained ephedrine, uh, in what appears to be bulk (unintelligible) from Barb, excuse me, from the garage area.

CMG: Who obtained it before from Barb?

ORK: Uh....

CMG: You said he obtained it before from Barb....

ORK: I misspoke, your Honor.

CMG: Oh, okay.

ORK: He, Mr. Parker had obtained ephedrine from within the garage to Mr. Chenoweth.

RHK: So Mr. Parker in the past has gotten ephedrine from the garage from Randy, is that what you are saying?

ORK: He's actually handed him, the ephedrine, in the garage.

RHK: Parker handed Randy the ephedrine?

ORK: Could you hold for just a moment? (unintelligible) (silence). According to Mr. Parker, the ephedrine apparently had already been cooked down according to Mr. Chenoweth.

RHK: Is this, are we talking about this morning, or are we talking about some other occasion?

ORK: These were other occasions.

RHK: Okay, so the ephedrine that Mr. Parker saw this morning, he recognized it as ephedrine, why?

ORK: The ephedrine he saw this morning. Mr. Parker is indicating that he was told to leave the garage and suspected because based on consistently with what he saw previously, of the ephedrine being cooked down, um, from prior manufacturing of methamphetamine in the garage suspected that the item he saw today and the flask was the item.

RHK: Okay, based on his prior visit there where they said they were making methamphetamine and this is ephedrine.

ORK: Correct.

RHK: Okay, and on the (unintelligible) that Mr. Parker is with you right now?

ORK: Yes he is.

RHK: And you are obtaining information with him as well as speaking with us?

ORK: Correct.

RHK: Okay. And the bottle that you describe with the hose coming out of it, what would that be used for?

ORK: That's commonly used as to what we refer to as a hydrogen gas generator. It occurs in the bubbling stage or the finishing product (unintelligible) other chemicals and salt is added that produces hydrogen gas. The gas is then stuck into the wet product and the hydrogen gas actually assists in the drying out and the finishing product of methamphetamine.

RHK: Okay, now all of this stuff is in the garage, right?

ORK: Correct.

RHK: Has, did Mr. Parker indicate to you whether or not he has received methamphetamine within the residence in the past?

ORK: Yes he has.

RHK: And what did he say with respect to that?

ORK: He told me that approximately 3-4 days ago, he was at the Aaron Drive address and both Barb Wood and Randy Chenoweth were present, um, Randy Chenoweth had gone to bedroom and reprieved a vial containing methamphetamine to the living room area, handed it to Barbara Wood and Mr. Wood placed some of the methamphetamine on the table and cut it into lines for ingestion.

RHK: Okay. And, so, from this, would it be safe to say that at least in that particular instance, the methamphetamine that they manufactured in the garage appears to be stored within the residence?

ORK: Yes.

RHK: Um.....

ORK: Mr. Parker has also indicated that Mr. Chenoweth manufactures methamphetamine primarily for personal use and occasionally gives it away to, not only Mr. Parker on occasion, but to other people as well.

RHK: Okay. Your Honor, the only thing I would add is that as far as Mr. Parker's criminal history, although Officer King hasn't verified what he said, I can tell the court that I was the prosecutor on that prior criminal case and so I know that to be accurate that he was convicted of a delivery of a drug.

CMG: Okay, and do you swear that that is true and to the best of your knowledge?

RHK: I do, I don't remember the time he served, although I do remember that he went to prison for it.

CMG: Okay, but do you swear that that is true?

RHK: Yes.

CMG: Thank you. Okay, um, the court does find probable cause to issue the warrant to search, um, the 1200 Aaron Drive residence, which is the single story white residence with a composition roof in the southwest corner of Binup and Aaron Drive to search therein for, um, all of the items which you listed for the court in your, uh, testimony which included flasks and filters and other manufacturing equipment, and, as well as the chemicals for the manufacture and the bi-products of the manufacture and the, um, ephedrine and drugs, um, packaging materials, crib notes, documents, dominion control and currency associated with it and the other items which I have not, was not able to take notes fast enough to get them down, but you may search for all those items in that location and you may, in the garage, and in the house, um, for the any drugs of manufacturing or precursor products. Okay?

ORK: And, your Honor (unintelligible)

CMG: Yes, you may.

ORK: Okay.

RHK: Alright, thank you.

ORK: Thank you very much.

CMG: Bye bye.

ORK: Goodbye.

ADDENDUM TO SEARCH WARRANT
2003M00333
State v. Randal Chenoweth 03-1-00211-1
State v. Barbara Wood 03-1-00212-0

Rosemary Kaholokula: RHK
Commissioner Martha Gross: CMG:
Detective Lee Beld: DLB

RHK: The tape is on. This is a telephonic application for an addendum to a search warrant that was obtained yesterday. Today is February 6, 2003 and it is 1:48 p.m. This is Rosemary Kaholokula representing the State. The magistrate will be Commissioner Gross as she was yesterday and the affiant today will be Detective Lee Beld of the Lynden Police Department and before we actually get started, since this is an addendum to yesterday's search warrant, um, I would just like to put on the record that I had confirmed Nicholas Parker's criminal history from what I recalled yesterday and further thought I would like to ask if the Commissioner would have found probable cause in the absence of that statement so that I don't need to be a witness in my own search warrant that might arrive later.

CMG: So, are you referring to would I have granted the, is your question would I have granted the search warrant yesterday based on just the officer's testimony without the confirmation that you added in that you had, you were aware of his criminal record?

RHK: Correct.

CMG: Uh, yes I would have and I think that because the only issue that you added was that you had independent knowledge of the fact that the informant, Mr. Parker, had, um, a criminal record and I think his statements to the officer are somewhat self-authenticated and there is no reason to say that you have a criminal record unless you do, because it's against your own interest, so I think that's self-authenticated and I would have granted the search warrant without the prosecutor's confirmation of that record.

RHK: Alright, thank you. As far as today, um, Detective Beld if you would raise your right hand, the Commissioner can swear you in.

CMG: Do you swear to tell the truth, the whole truth and nothing but the truth in all matters before the Court?

DLB: I do.

RHK: Will you please go ahead and state what it is that you want to search for at this point and what you want to search for?

Exhibit C

DLB: We want to search a crème colored 1978 motorhome in front of 1200 Aaron Drive. Further described as a Cruiser brand motorhome with license no. 676 KYR.

RHK: Okay, and what do you want to search for?

DLB: We are looking for flasks, ephedrine, red phosphorous, tincture of iodine, acetone, kerosene, Draino, red devil lye, scales, chemical bi-products, hoses, coffee filters with bi-products, hydrogen gas generators, jars, vapors or chemicals used in methamphetamine manufacturing, methamphetamine packaging materials, crib notes, records showing dominion and control referring to the association of the sale of controlled substances.

RHK: Now you have spoken with, uh, Ryan King?

DLB: That is correct.

RHK: And this tape should reflect that at yesterday's search warrant, we set forth Ryan King's qualifications in terms of meth labs and manufacturing of methamphetamine. When you spoke with Officer King, did he confirm that those items that you are searching for are items used in the manufacture of methamphetamine?

DLB: That is correct.

RHK: Now the search warrant that was issued yesterday, um, well, let me back up even before that, were you present when Officer King was talking with Nicholas Parker in terms of gathering information for yesterday's search warrant?

DLB: I was.

RHK: And you heard what Nicholas Parker had to say about what was in the garage and in the house?

DLB: That is correct.

RHK: And are you familiar with whether or not the garage and the house are currently being searched pursuant to yesterday's search warrant?

DLB: They are right now.

RHK: Whose doing the search?

DLB: Uh, I was part of the original take down in front of the residence and the Washington State Patrol is currently doing a search along with Ryan.

RHK: Now are they specially trained individuals in terms of methamphetamine labs?

DLB: They are.

RHK: And it's generally, what is their training? In other words, what are they trained to do and recognize?

DLB: Uh, they are trained in, uh, SWAT procedures and also in the acts of takedowns and dismantling of a methamphetamine lab.

RHK: And they have received specific training in terms of how to dismantle a lab?

DLB: That is correct.

RHK: And are they familiar then with what a meth lab looks like and how methamphetamine is manufactured?

DLB: I'm sorry, repeat that.

RHK: And are they then familiar with how methamphetamine is manufactured?

DLB: They are.

RHK: Okay. Have they given you some indication of what they have found so far in the garage?

DLB: They have.

RHK: And what have they told you?

DLB: They found red phosphorous reduction, acetone, iodine, sodium hydroxide, baggy with, um, a white powdery substance tested positive for meth and pipes with residues that also test positive for methamphetamine.

RHK: Now the red phosphorous and the acetone and, um, perhaps the iodine methamphetamine, are those items consistent with what Nicholas Parker had said would in fact be found in the garage?

DLB: That is correct.

RHK: Did Nicholas Parker provide information to you regarding the motorhome that you seek to search?

DLB: He did.

RHK: What information did he provide?

DLB: He said that a couple of days ago, while they were in the process of the cooking portion of the meth that is referred to as the cooking portion while the chemical processes

are going to make methamphetamine, he stated that Randy and Barb, the two subjects that were, uh, inside the residence and have dominion and control over the residence, uh, kept going in and out of the motorhome and he believed that Barb had made some mention to do with odor and that they were doing something in the motorhome he wasn't sure what it was, but it had to do with the process of methamphetamine cooking and had something to do with the fact that the odor was strong and they didn't want it in the house.

RHK: Was this cooking going on in the garage or in the house?

DLB: They, correct, it was taking place in the house.

RHK: Okay, so while Barb and Randy are cooking the meth in the garage a few days ago, they keep wandering in and out of this motorhome and Barb says something about to prevent the odor, or the odor was too strong, to do it in the garage?

DLB: That is what he believed. Something along those lines.

RHK: Okay, um, I think that's it, your Honor.

CMG: Okay, and, um, court does have, um, find that there is probable cause to search the crème colored motorhome in front of 1200 Aaron Drive, more particularly described as having a license plate no. of 676 KYR and to search therein for the chemicals, equipment and other items that the officer listed in his testimony, um, including precursor chemicals, crib notes, documents of dominion and control, currency and equipment, all of those items that were listed.

RHK: And this will be based on yesterday's probable cause, as well as.....

CMG: Well, the information today, yes.

RHK: Alright, thank you, may we sign your name to the warrant?

CMG: Yes you may.

RHK: Thank you.

CMG: Bye bye.

RHK: Bye.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON Respondent	))	Supreme Court No. 77615-6 Court of Appeals No. 53027-5-I
v.	)	
RANDALL CHENOWETH, Appellant	))	

DECLARATION OF SERVICE

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 3rd DAY OF JULY, 2006, A COPY OF APPELLANT'S *SUPPLEMENTAL BRIEF FOLLOWING ACCEPTANCE OF REVIEW* WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL TO THE ADDRESSES LISTED:

[X] WHATCOM COUNTY PROSECUTING ATTORNEY
311 GRAND AVE., STE. 201
BELLINGHAM, WA 98226

[X] RANDALL CHENOWETH

SIGNED IN SEATTLE, WASHINGTON THIS 3RD DAY OF JULY, 2006

X Ann Joyce